

RECEIVED

MAY - 6 1996

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
ORIGINAL

In the Matter of)
)
Implementation of Section 207 of the) **CS Docket No. 96-83**
Telecommunications Act of 1996)
)
Restrictions on Over-the-Air)
Reception Devices: Television Broadcast)
and Multichannel Multipoint Distribution)
Service)

DOCKET FILE COPY ORIGINAL

To: The Commission - Mail Stop 1170

COMMENTS OF THE COMMUNITY BROADCASTERS ASSOCIATION

1. The Community Broadcasters Association ("CBA") submits the following comments in response to the Commission's *Notice of Proposed Rule Making* ("Notice") in the above-referenced proceeding, FCC 96-151, released April 4, 1996. CBA is the trade association of the nation's low power television ("LPTV") stations.

2. As the Commission is aware, LPTV stations provide important local programming to general audiences in small- and medium-sized cities and towns to specialized audiences in larger markets, which are often too small to support their own full power television service.^{1/} Under Section 614 of the Communications Act, LPTV stations enjoy only limited must-carry rights on cable television; and the cable television industry has many notable examples of flat

^{1/} Examples include the only Spanish language television service in the Washington, D.C. market; the only local TV stations in Hopkinsville, Kentucky, Reidsville, North Carolina, Junction City, Kansas, several communities in northern Georgia, and many other communities throughout the nation; the only African-American television station in Louisville, Kentucky; a widely-viewed Spanish language service in Miami that is not oriented toward Mexican programming as are most U.S. Spanish language stations in the United States; a network of stations focusing on programming for disabled persons; and affiliates of networks such as Fox and UPN. A full list the unique services provide by LPTV stations would go on for pages.

2411

refusal to carry LPTV stations no matter how high the quality of their programming.^{2/} Thus in many instances, the only way that the public can enjoy the services provided by LPTV stations is by over-the-air reception.

3. The monopoly power of the cable television industry to exclude LPTV stations from access to a very large percentage of the nation's homes, through their control of bottleneck facilities that are the only access to TV receivers in those homes,^{3/} is exacerbated when cable operators encourage local regulations that restrict outdoor receiving antennas or enter into financial arrangements with real estate developers that involve placing covenants in deeds that bar such antennas. In Section 207 of the Telecommunications Act of 1996, Congress has clearly signaled its intent that the Commission pre-empt local actions that deprive the public of the ability to elect to receive television signals through the airwaves, to choose which stations they want to watch on their own, and not to pay a fee to any wired service provider. The Commission should exercise its authority promptly, and fulfill the Congressional intent. The result will be more diversity of service, more competition, and most importantly the preservation of important local programming service -- which is the bedrock of the American broadcast system.

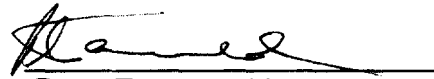
4. The survival of LPTV and other over-the-air broadcast services should be an economic matter that involving only broadcasters, viewers, and advertisers. The market place does not function freely when state and local regulators and real estate developers intervene,

^{2/} CBA's does not intend to condemn the entire cable industry. There are also notable examples of cooperation between cable operators and LPTV stations.

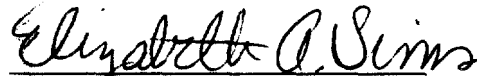
^{3/} Most new television sets sold today have only one antenna input, a 75-ohm input designed for cable television. Once a cable is attached, over-the-air reception is no longer possible unless the viewer has an A/B switch, which the cable industry is no longer required to provide.

because they should not be choosing what programming the public can watch, and individual members of the public seeking the right to choose for themselves often do not have the political or economic power to stop regulators or real estate entities from interfering with that right. Congress has given the Commission the authority and direction to give full freedom to viewers. The Commission should do so promptly.

Respectfully submitted,



Peter Tannenwald



Elizabeth A. Sims

(bar admission pending)

Irwin Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W.
Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

May 6, 1996

Counsel for the Community
Broadcasters Association